



Agenda Date: 8/22/07

Agenda Item: 9A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF SOMERSET HILLS LEARNING)
INSTITUTE – EXEMPTION FROM SMART GROWTH)
REGULATIONS AT N.J.A.C.14:3-8.8(a)(6))
)
) ORDER DENYING
) EXEMPTION
)
) NON-DOCKETED MATTER

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Board of Public Utilities (“Board”) adopted its Extension of Service Rules (“Main Extension Rules”) on November 16, 2004 and these rules were subsequently published in the New Jersey Register on December 20, 2004 at 36 N.J.R. 5928. The Main Extension Rules were promulgated to ensure that the Board’s regulations governing extension of service reflected the State of New Jersey’s Smart Growth policies. This Order will address a petition for an exemption from the Main Extension Rules.

The Board will address a request by Somerset Hills Learning Institute (Petitioner) for an exemption from the Main Extension Rules pursuant to N.J.A.C.14:3-8.8(a)(6). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good.

The Petitioner is a non-profit private school for autistic children located in Bedminster, New Jersey. The Petitioner currently has 19 children enrolled in its facility in the basement of a church. The Petitioner built a new school to accommodate up to 40 children. This new school, located at 1810 Burnt Mills Road in Bedminster, New Jersey, is in an area not designated for growth. The Petitioner now seeks relief from the rules that required the Petitioner to pay the entire cost of extending gas and electric service to the school. Jersey Central Power & Light Company billed the Petitioner \$18,527.99 to extend electric service. Petitioner now seeks to have these costs reimbursed via this exemption petition.

To obtain an exemption based on a significant public good, the rules provide that a person must demonstrate to the Board that all of the following criteria are met:

1. The project or activity served by the extension would provide a significant benefit to the public or to the environment;

Here Petitioner states that its unique education techniques for autistic children benefit the public because they save taxpayers millions of dollars by alleviating the need for public schools to train and staff special educators.

2. That the project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies; and

The Petitioner states that the building site is centrally located for the families of the students.

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

The Petitioner states that the building site was donated to them and therefore there is no practical alternative to build within an area designated for growth.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), staff consulted with the Office of Smart Growth. Benjamin Spinelli, Acting Executive Director of the Office of Smart Growth disagreed with Petitioner's arguments. In a letter dated June 22, 2007 Mr. Spinelli noted that Petitioner's property is in the Environmentally Sensitive Planning Area (PA5) and it is not within a designated center. Therefore, according to Mr. Spinelli, "development in this area is not consistent with the State Plan."

DISCUSSION:

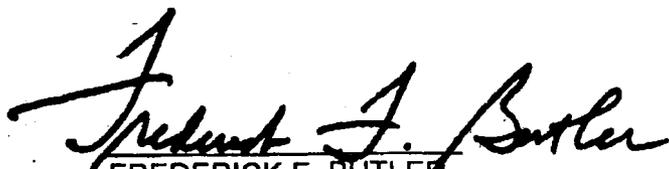
After reviewing the petition, the Board FINDS that not all of the above criteria are met. Specifically, the Board FINDS that the project is not consistent with smart growth and does not outweigh the benefits of smart growth. With regard to criterion number 2, the Office of Smart Growth has determined that because the Petitioner's property is located within the Environmentally Sensitive Planning Area (PA5), "development in this area is not consistent with the State Plan." Moreover, unlike the petition the Board granted to O.C.E.A.N. Inc., where exemptions to the costs of constructing extensions of regulated entity service were sought for a new daycare center built on the grounds of an existing community college, and for which construction the Office of Smart Growth confirmed would not negatively impact the achievement of the State's smart growth goals, here an entirely new school was constructed in an area not designated for growth. See I/M/O O.C.E.A.N. Inc Petitioner for Exemption from Smart Growth Rules N.J.A.C. 14:3-8.8(a)(5) (September 27, 2006) (non-docketed matter). Finally, the Board notes that Petitioner does not meet the third criteria. Petitioner did not provide any information that it examined the possibility of alternative sites for the school or selling the land that was donated to them and constructing the school in an area designated for growth.

Therefore, the Board HEREBY DENIES the exemption from the Main Extension Rules pursuant to N.J.A.C.14:3-8.8(a)(6) for an extension of electric service to a school built by Somerset Hills Learning Institute at 1810 Burnt Mills Road Bedminster, New Jersey.

DATED: 8/24/07

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

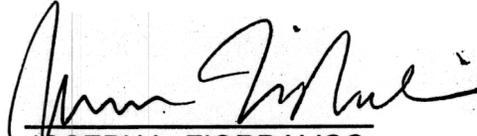

FREDERICK F. BUTLER
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

DISSENT

In casting the only negative vote against staff recommendation to deny the exemption petition feel the need to explain the reason for my "no vote." In this specific case it is my opinion that the overwhelming public good outweighs all other criteria for an exemption.

Dated: 8/24/07


JOSEPH L. FIORDALISO
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

IN THE MATTER OF SOMERSET HILLS LEARNING INSTITUTE – EXEMPTION FROM SMART
GROWTH REGULATIONS AT N.J.A.C.14:3-8.8(a)(6)
NON-DOCKETED MATTER

SERVICE LIST

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16

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VIA OVERNIGHT DELIVERY

July 14, 2007

Kristi Izzo, Board Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Subj: Petition for a Clarifying Order and/or a Rulemaking

Dear Ms. Izzo.

Please accept for filing the attached Petition of Old Mill Power Company for a Clarifying Order and/or a Rulemaking seeking a clarification of the Board's non-docketed 07/06/05 Clean Energy Order RE: In the matter of the authorization to use Class I and Class II renewable energy certificates issued by PJM Environmental Information Services, Inc. for compliance with New Jersey's Renewable Portfolio Standards (the GATS Order).

Sincerely

Michel A. King

Michel A. (Mitch) King
President

cc: Suzanne Dice-Goldberg, Esq. Administrative Practice Officer
Edward D. Beslow, Esq., Senior Legal Specialist
Michael Winka, Director, Office of Clean Energy
Ronald Jackson, Office of Clean Energy
Lance Miller, Director, Policy and Planning

**PETITION OF OLD MILL POWER COMPANY
FOR A CLARIFYING ORDER AND/OR A RULEMAKING
REGARDING RENEWABLE ENERGY GENERATORS THAT ARE NOT EQUIPPED WITH
PJM e-METERS (METERS THAT ARE ELECTRONICALLY MONITORED IN REAL TIME
BY PJM INTERCONNECTION, LLC)**

July 14, 2007

Old Mill Power Company (Old Mill) is a Virginia corporation with headquarters at 2530 Wyngate Road, Charlottesville, VA, 22901-8927. A substantial part of Old Mill's business involves buying and re-selling Renewable Energy Certificates (RECs) that are used by New Jersey load serving entities for compliance with the New Jersey Renewable Energy Portfolio Standards (NJ RPS, N. J. A. C. 14:4-8.). Old Mill's business is materially affected by the New Jersey Board of Public Utilities' (the Board's) rules, orders, policies, and practices.

Old Mill asks the Board to over-rule, as soon as possible, either by clarifying order or by a new rulemaking, Staff's policy to not to issue Generation Attribute Tracking System (GATS) State Certification Numbers to otherwise qualifying Class I and Class II renewable energy generators unless such generators are e-metered by PJM Interconnection, LLC ("Staff's e-meter policy"). If the Board does not over-rule Staff's e-meter policy as soon as possible before the September 1, 2007 reporting deadline for RPS compliance, many market participants, including Old Mill, New Jersey load serving entities, and ultimately New Jersey electricity consumers, will be materially and adversely affected by the on-going run-up in NJ Class I REC prices.

Old Mill has been a subscriber to the PJM Environmental Information Services, Inc. (PJM EIS) GATS since shortly after the Board approved use of that system in its non-docketed 07/06/05 Clean Energy Order RE: In the matter of the authorization to use Class I and Class II renewable energy certificates issued by PJM Environmental Information Services, Inc. for compliance with New Jersey's Renewable Portfolio Standards (the GATS Order).

Prior to the GATS Order, many of the NJ Class I RECs that Old Mill bought and re-sold for NJ RPS compliance were produced by relatively small qualifying generators that use landfill gas as their renewable fuel and are located outside of New Jersey but within the PJM Interconnection, LLC's (PJM's) transmission service territory. Because their energy sources (such as sunlight, wind, landfill gas, etc.) tend to be widely distributed geographically and cannot be readily transported to central locations, most renewable energy generators are relatively small compared to their fossil-fueled or nuclear-fueled counterparts. As a result, such small, renewable energy generators can make a significant contribution to the total number of RECs available within PJM, even though it may not be cost effective to equip such generators with meters that are electronically monitored in real time by PJM's operations center in Valley Forge, Pennsylvania (such meters being called "e-meters" by PJM).

All generators that Old Mill has purchased NJ Class I RECs from in the past that are not e-metered by PJM are equipped with utility-grade revenue meters that are read at least monthly by each generator's local utility. PJM EIS currently has procedures in place to enable such

generators to record their monthly REC production in the GATS. It's important to note that such generators are definitely *not* "net metering" with their local utilities as that term is defined in N. J. A. C. 14:4-9.2 and typically used in the renewable energy industry.

The last paragraph of the GATS Order (the ordering paragraph) says, among other things:

...the Board HEREBY APPROVES the use of Class I and Class II renewable energy certificates issued by PJM-EIS GATS for compliance with New Jersey's Renewable Energy Portfolio Standards set forth at N. J. A. C. 14:4-8 to commence as soon as PJM-EIS GATS is operational, which is projected to be on or about September 15, 2005, *except that Solar RECs and all "Behind the Meter" (BTM) RECs utilized for compliance with New Jersey's Renewable Portfolio Standards must continue to be issued by the Solar REC Administrator or the BTM REC Administrator, as designated by the Board.* A BTM system means any Class I renewable energy system that is interconnected and *net meters* the electricity generated from the renewable energy system *into New Jersey's electric distribution system.* A BTM REC is issued to a BTM Class I renewable energy system. [Italics added.]

One reasonable interpretation of the excerpted language--and especially of the Board's use of the phrase "must continue" in that context--is that the Board did *not* intend the GATS Order to modify the definition of Class I or Class II renewable energy sources already contained in N. J. A. C. 14:4-8, meaning that, all other things being equal, any Class I or Class II renewable energy source that qualified for NJ RPS compliance prior to issuance of the GATS Order could reasonably be expected to qualify for NJ RPS compliance after the GATS Order was issued.

Under the GATS operating rules, the GATS administrator will not record RECs from an otherwise qualifying generator as being NJ RPS eligible until the appropriate NJ BPU Staff member issues such generator a unique State Certification Number and specifies whether such generator is a NJ Class I or a NJ Class II resource. Since the GATS Order was issued, it has become clear that the NJ BPU Staff is refusing to issue State Certification Numbers to otherwise qualifying renewable energy generators that are not equipped with PJM e-meters, even though: 1) such e-meters are not explicitly required by statute, rule, or Board order; 2) such generators could be, and had been, used for NJ RPS compliance prior to issuance of the GATS Order; and 3) the GATS has procedures in place for recording the REC output of such generators.

Old Mill's understanding of Staff's position is that Staff considers generators that are: 1) located within PJM but outside of New Jersey; and 2) not equipped with PJM e-meters, to be "behind the meter" and/or "net metered" from a metering standpoint and therefore not eligible for NJ RPS compliance because they are not interconnected and net metered "into New Jersey's electric distribution system" (a reference to the italicized text in the second sentence of the excerpt above).

As Old Mill sees it, there are three problems with that interpretation: 1) it takes the behind the meter (BTM) language of the ordering paragraph out of its proper context; 2) it requires an interpretation of "net metered" that is patently contrary to "net metering" as defined at N. J. A. C. 14:4-9.2; and 3) it's having a material and adverse effect on the REC market that threatens to

needlessly cost market participants, including Old Mill, NJ load serving entities, and ultimately NJ electricity consumers, an aggregate sum amounting to tens of millions of dollars.

The proper context for interpreting the ordering paragraph's BTM language includes the entire sentence that reads, "A BTM system means any Class I renewable energy system that is interconnected and net meters the electricity generated from the renewable energy system into New Jersey's electric distribution system." When considered in its entirety, the plain language of this sentence clearly indicates that if a system is *not* "interconnected" and "net metered" into New Jersey's electric distribution system, it is *not* a BTM system for the purposes of the GATS Order and therefore does *not* need to have its RECs issued by "the BTM REC Administrator designated by the Board". In other words, regardless of how such generators are interconnected to, or metered by, PJM or local utilities, renewable energy generators: 1) that are located within PJM but are *not* interconnected and net metered into New Jersey's electric distribution system; and 2) that qualified as Class I or Class II resources prior to issuance of the GATS Order, remain qualified as Class I or Class II resources after issuance of the GATS Order.

Old Mill's understanding of the working definition for "net metered" that Staff is using in this context is that, because the type of generators in question are not equipped with PJM e-meters, whereas the local utilities such generators are interconnected to are so-equipped, the electricity usage attributable to each utility by PJM for the purposes of financial settlement after adjustment for the contribution to usage made by the e-metered generators in each utility's service territory is, by the laws of physics, the "net" of each such utility's e-meter-recorded usage after adjustment for e-meter-recorded generation minus the output of any non-e-metered generators (including the output of any non-e-metered renewable energy generators) in such utility's service territory. These accounting procedures are used by PJM for the financial settlement of wholesale electricity transactions.

Such a working definition for "net metered", and its application to out-of-state, wholesale electricity transactions, are not authorized by any New Jersey statute, rule, or order, and the working definition itself is patently contrary to the definition of "net metering" as contained in N. J. A. C. 14:4-9.2, which applies to *in-state, retail* electricity transactions only.

Old Mill also understands that Staff is concerned that the procedures the GATS currently has in place to record the output of renewable energy generators that are not equipped with PJM e-meters is effectively a generator "self-report" with no equipment or procedures in place for independent verification of report accuracy. Old Mill notes, however, that there is currently no explicit requirement in statute, rule, or order for such independent verification of REC production reports, and even if such a requirement were deemed to be in the public interest, it should not be implemented by Staff without proper notice, opportunity for public comment, opportunity for hearing, Board approval, and a reasonable time for affected market participants to comply with any resulting order by adjusting their policies and practices and reforming their contracts.

Staff's e-meter policy is significantly reducing the number of Class I and Class II RECs available in the marketplace which, in turn, is needlessly driving compliance costs upward. One REC broker Old Mill consulted with while preparing this petition estimated that, in the Commonwealth Edison (ComEd) service territory alone, there are between 200,000 and 300,000

RECs that were once available from Class I generators prior to issuance of the GATS Order that were effectively removed from the NJ RPS compliance market by Staff's post-GATS-Order e-meter policy.

While the effect of Staff's e-meter policy on Reporting Year (RY) 2007 Class II REC prices seems to be minimal, the effect on RY 2007 Class I REC prices is quite severe. At this time last year, RY 2006 Class I REC prices were heading downward and eventually traded below \$4.00 per MegaWatt hour (\$4/MWh) shortly before the BPU's September 1 reporting deadline. As of this writing, Old Mill has been told by a broker that: 1) the most recent closing price he had heard of was \$21.50/MWh; 2) an offer of \$25/MWh currently had no bids against it; and 3) some market participants were concerned that prices might climb to \$40/MWh by the BPU's reporting deadline, which is just 49 days away as of this writing. Such prices would represent a ten-fold run-up in Class I REC prices in one year, and would have a material and adverse impact on the NJ compliance market, and ultimately on NJ electricity consumers, amounting to tens of millions of dollars annually...an adverse impact fueled, at least in part, by an unpublished, *de facto* regulatory modification--Staff's e-meter policy—that was never explicitly considered, nor approved, by the Board.

Old Mill urges the Board to over-rule Staff's e-meter policy by clarifying that the GATS Order was not intended to disqualify otherwise qualifying Class I and Class II renewable energy generators solely on the basis of whether such generators are equipped with PJM e-meters. It's in the public interest for the Board to act as quickly as possible on this matter so that the hundreds of thousands of RECs produced during RY 2007 by non-e-metered, but otherwise qualifying, Class I and Class II generators that are not currently recorded in the GATS as NJ Class I eligible can be so-recorded and brought to market in time to mitigate the on-going, severe run-up in RY 2007 Class I REC prices.

Respectfully submitted,

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